

§210.34

19 CFR Ch. II (4–1–08 Edition)

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the investigation the matter or matters concerning the order or subpoena issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon testimony by the party, officer, or agent, or documents, or other material in support of his position in the investigation;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a motion or other submission by the party concerning the order or subpoena issued be stricken or rule by initial determination that a determination in the investigation be rendered against the party, or both; or

(6) Order any other non-monetary sanction available under Rule 37(b) of the Federal Rules of Civil Procedure. Any such action may be taken by written or oral order issued in the course of the investigation or by inclusion in the initial determination of the administrative law judge. It shall be the duty of the parties to seek, and that of the administrative law judge to grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence. If, in the administrative law judge's opinion such relief would not be sufficient, the administrative law judge shall certify to the Commission a request that court enforcement of the subpoena or other discovery order be sought.

(c) *Monetary sanctions for failure to make or cooperate in discovery.* (1) If a party or an officer, director, or managing agent of the party or person designated to testify on behalf of a party fails to obey an order to provide or permit discovery, the administrative law judge or the Commission may make such orders in regard to the failure as are just. In lieu of or in addition to taking action listed in paragraph (b) of this section and to the extent provided

in Rule 37(b)(2) of the Federal Rules of Civil Procedure, the administrative law judge or the Commission, upon motion or sua sponte under §210.25, may require the party failing to obey the order or the attorney advising that party or both to pay reasonable expenses, including attorney's fees, caused by the failure, unless the administrative law judge or the Commission finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(2) Monetary sanctions may be imposed under this section to reimburse the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations. Monetary sanctions will not be imposed under this section to reimburse the Commission for attorney's fees.

§210.34 Protective orders.

(a) *Issuance of protective order.* Upon motion by a party or by the person from whom discovery is sought or by the administrative law judge on his own initiative, and for good cause shown, the administrative law judge may make any order that may appear necessary and appropriate for the protection of the public interest or that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the administrative law judge;

(6) That a deposition, after being sealed, be opened only by order of the Commission or the administrative law judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or the administrative law judge. If the motion for a protective order is denied, in whole or in part, the Commission or the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The Commission also may, upon motion or sua sponte, issue protective orders or may continue or amend a protective order issued by the administrative law judge.

(b) *Unauthorized disclosure of information.* If confidential business information submitted in accordance with the terms of a protective order is disclosed to any person other than in a manner authorized by the protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the submitter of the information and the administrative law judge or the Commission, and, without prejudice to other rights and remedies of the submitter of the information, make every effort to prevent further disclosure of such information by the party or the recipient of such information.

(c) *Violation of protective order.* Any individual who has agreed to be bound by the terms of a protective order issued pursuant to paragraph (a) of this section, and who is determined to have violated the terms of the protective order, may be subject to one or more of the following:

(1) An official reprimand by the Commission;

(2) Disqualification from or limitation of further participation in a pending investigation;

(3) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to § 201.15(a) of this chapter;

(4) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice;

(5) Sanctions of the sort enumerated in § 210.33(b), or such other action as may be appropriate.

The issue of whether sanctions should be imposed may be raised on a motion by a party, the administrative law judge's own motion, or the Commission's own initiative in accordance with § 210.25(a)(2). The Commission or the administrative law judge shall allow the parties to make written submissions and, if warranted, to present oral argument bearing on the issues of violation of a protective order and sanctions therefor. When the motion is addressed to the administrative law judge, he shall grant or deny a motion for sanctions by issuing an order.

(d) *Reporting requests for confidential business information—*(1) *Reporting Requirement.* Each person subject to protective order issued pursuant to paragraph (a) of this section shall report in writing to the Commission immediately upon learning that confidential business information disclosed to him or her pursuant to the protective order is the subject of a subpoena, court or administrative order (other than an order of a court reviewing a Commission decision), discovery request, agreement, or other written request seeking disclosure, by him or any other person, of that confidential business information to persons who are not, or may not be, permitted access to that information pursuant to either a Commission protective order or § 210.5(b).

(2) *Sanctions and other actions.* After providing notice and an opportunity to comment, the Commission may impose a sanction upon any person who willfully fails to comply with paragraph (d)(1) of this section, or it may take other action.

Subpart F—Prehearing Conferences and Hearings

§ 210.35 Prehearing conferences.

(a) *When appropriate.* The administrative law judge in any investigation may direct counsel or other representatives for all parties to meet with him